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Supreme Court of the United States

OCTOBER TERM 1952

No. 131

DARRELL LABRENZ, RHODA LABRENZ and CHERYL LINN LABRENZ, a minor, by DARRELL LABRENZ, her next friend,

Petitioners

v.

PEOPLE OF THE STATE OF ILLINOIS, on the relation of ALDA WALLACE and HARRY HILL, the Chief Probation Officer of the Circuit Court (The Family Court) of Cook County, Illinois, Guardian over the person of CHERYL LINN LABRENZ, a minor,

Respondents

Petition for Writ of Certiorari to the Supreme Court of Illinois

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SUPREME COURT OF THE UNITED STATES

October Term 1952

No.

Darrell Labrenz, Rhoda Labrenz and
Cheryl Linn Labrenz, a minor, by
Darrell Labrenz, her next friend,

Petitioners

v.

People of the State of Illinois,
on the relation of Alda Wallace and
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the person of Cheryl Linn Labrenz, a minor,

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Petition for Writ of Certiorari to the Supreme Court of Illinois

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To the Supreme Court of the United States:

The petitioners, Darrell Labrenz, Rhoda Labrenz and Cheryl Linn Labrenz, a minor, by Darrell Labrenz, her next friend, present this petition for writ of certiorari to the Supreme Court of Illinois to review the judgment and opinion of the Supreme Court of Illinois affirming judg-

ments against your petitioners, and show unto the Court as follows:

Summary of Matters Involved

1. *Opinion of the Court Below.*

The opinion of the Supreme Court of Illinois is reported at 104 N. E. 2d 769. It appears in the record. [73-79][1]

2. *Statutory Provisions Sustaining Jurisdiction.*

The jurisdiction of this Court rests on 28 U. S. C. 1257.

3. *Timeliness of the Petition.*

The judgment of the Supreme Court of Illinois affirming the judgment of the Circuit Court was entered March 20, 1952. The judgment affirming the judgment of the trial court became final on March 20, 1952. This petition is duly presented and filed within the 90-day time limit after the judgment became final. The petition is timely.

4. *State Law Involved.*

This case draws into question the validity of the Juvenile Court Act of Illinois, Illinois Revised Statutes, 1949, Chapter 23, paragraphs 190-220, which read in part as follows:

> 190. . . . §1. All persons under the age of twenty-one (21) years, shall, for the purpose of this act only, be considered wards of the state and their persons shall be subject to the care, guardianship and control of the court as hereinafter provided.
>
> For the purpose of this act, the words "dependent child" and "neglected child" shall mean any male child who while under the age of seventeen years or any

[1] Numbers appearing herein within brackets refer to pages of the printed record in this case.

female child who while under the age of eighteen years, for any reason, is destitute, homeless or abandoned; or dependent upon the public for support; or has not proper parental care or guardianship; or habitually begs or receives alms; . . .

193. . . . §4. Any reputable person, being a resident of the county, may file with the clerk of the court having jurisdiction of the matter, a petition in writing, setting forth that a certain child, naming it, within his county, not now or hereafter an inmate of a State institution incorporated under the laws of this State, except as provided in section 12 and 18 hereof, is either dependent, neglected or delinquent as defined in section 1 hereof: and that it is for the interest of the child and this State that [the] child be taken from its parent, parents, custodian or guardian and placed under the guardianship of some suitable person to be appointed by the court; and that the parent, parents, custodian or guardian of such child, are unfit or improper guardians, or are unable or unwilling to care for, protect, train, educate, control or discipline such child, or that the parent, parents, guardian or custodian consent that such child be taken from them.

5. *Constitutional Provisions Involved.*

The First Amendment, relied upon in this case, reads as follows:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The pertinent parts of the Fourteenth Amendment which petitioners rely upon read as follows:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

6. *Questions Presented.*

I

Does the Juvenile Court Act of the State of Illinois, as enforced, construed and applied, abridge petitioners' rights of freedom of conscience and freedom of worship, contrary to the First and Fourteenth Amendments to the Constitution of the United States?

II

Is the Juvenile Court Act of Illinois, as enforced, construed and applied, vague and indefinite and an unreasonable, arbitrary, discriminatory and capricious exercise of the police power, so as to abridge the constitutional rights of the petitioners, contrary to the First and Fourteenth Amendments to the Constitution of the United States?

III

Does the Juvenile Court Act of Illinois, as enforced, construed and applied, deprive the petitioners of freedom to enjoy and exercise family relationship, parental care and love, freedom of conscience and freedom of worship, contrary to the First Amendment and the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution?

Each of these questions was raised by motion to dismiss in the Circuit Court of Cook County. [4, 5, 22, 26] These questions were adversely determined by the Su-

preme Court of Illinois. See the opinion of the Supreme Court of Illinois which appears in the record.

7. *How Constitutional Questions Raised.*

The constitutional questions were raised in a motion to dismiss filed in the Circuit Court of Cook County, Illinois. [4, 5, 22, 26] Each question presented in that court was considered and overruled in a written opinion. [6] Each holding of the trial court was presented on appeal to the Supreme Court of Illinois and duly assigned as error. [62-69] Each federal question presented upon this petition also was presented to the Supreme Court of Illinois.

8. *Nature and History of Action.*

These proceedings were instituted in the Circuit Court (The Family Court) of Cook County, Illinois to have Cheryl Linn Labrenz declared a dependent child because her parents, Darrell Labrenz, the father, and Rhoda Labrenz, the mother, refused to consent to a blood transfusion.

The petition was filed by a probation officer pursuant to the provisions of Section 193 of Chapter 23 of the Illinois Revised Statutes, 1949, State Bar Association Edition. [2-3]

The petition alleged that Cheryl was without proper parental care [2], that the child was at Bethany Hospital, Chicago, that the superintendent was Ellis M. Studebaker, and that the parents were unwilling to care for and protect the child, thereby making it a dependent child. [2]

The petition prayed for an early hearing, for an order declaring the child to be a dependent child and that custody be taken from the parents and placed in some suitable and competent person designated by the court. [3-4]

The petition was filed on April 17, 1951. [2] Summons and subpoenas were issued and served. [3] All parties appeared and a hearing was had on April 18, 1951. [6, 12-32] The parents challenged the authority of the court to grant the requested relief by motions to dismiss. [4-6] The court,

on the 18th of April, found that Cheryl was a dependent child because of the refusal of the parents to consent to the blood transfusion claimed to be needed according to testimony of the doctors. [7-8] The court appointed the chief probation officer as guardian and directed him to consent to the blood transfusion. [8] The court retained jurisdiction for supervision of the welfare of the child during the time of the authorized treatment by blood transfusion. [8] The order overruled the motions to dismiss filed by the parents. [9]

On May 4, 1951, the guardian filed a petition reporting his executing a consent and on the blood transfusion given on April 18. In the petition he requested an order permitting release of the child from the hospital and returning it to the parents. He prayed for a release as guardian. [9-10] The court ordered the child removed from the hospital and returned to its parents but ordered retention of the guardian until further order of the court. [11] Subsequent reports were made as to the medical progress of the child and on June 29, 1951 an order was made discharging the guardian, releasing the child to its parents and dismissing the proceedings. [12] By various motions and orders the time for filing the report of the proceedings was continued to July 16, 1951 when the report was filed. [59-61]

A writ of error to the Circuit Court (The Family Court) of Cook County was sued out in the Supreme Court of Illinois and forwarded to the clerk of said inferior court. The trial court record was filed in that court. Assignments of error were duly filed supporting each ground of the argument made. [62-69] The case was briefed and argued. After submission the Supreme Court of Illinois affirmed the judgment of the trial court.

9. *Summary of Facts.*

Darrell Labrenz is twenty-five years of age. He is an active minister of Jehovah's witnesses. [24] His wife,

Rhoda, is twenty years of age, a housewife and is also active in the ministry of Jehovah's witnesses. [24] In preparation for the confinement of his wife and the delivery of a baby at birth by a doctor Labrenz employed Doctor Bowman and hired the usual and necessary hospital facilities at Bethany Hospital. [23]

Rhoda Labrenz entered the hospital and Doctor William W. Wieand, in the absence of Doctor Bowman, on April 11, 1951, delivered the child, Cheryl Labrenz. [13, 23] He thereafter examined the child many times and, aside from a low blood count, found the child in apparent good condition. [13] A blood test showed that the child had erythroblastosis, the Rh blood condition where antibodies or poisons destroy the red blood cells. [14, 16]

Doctor Wieand attempted, four or five times during the first week after birth of the child, to get the parents to consent to a blood transfusion, the usual method of treatment for this condition. They refused. [14] The hospital reported it to the authorities. [16] As a result Alda Wallace, a probation officer of the Family Court, was notified of the danger. She made a hurried visit to the hospital and immediately filed the dependency petition in the court below. [13] On serving Rhoda Labrenz with process she talked with her, attempting to persuade her to permit the blood transfusion. Rhoda objected on religious grounds and quoted Bible passages against the use of blood. [13]

Later, on the day the petition was filed, the Health Commissioner of the Chicago Board of Health telephoned the father, Darrell, in a effort to persuade him to consent to the transfusion. Again it was refused. [19] The doctor said he was no match for Labrenz and was unable to overcome his Scriptural arguments against the transfusion. [20]

At the hearing in the trial court the evidence for the People included the record of the hospital, giving the history of the Rh blood condition. It supported the medical testimony, showing a steady drop in the blood count. [22]

The medical testimony showed that the blood count had been dropping steadily from the day of birth [18], that the normal blood count of a child of that age was about five million but that a check of this child showed a count of merely one million nine hundred and fifty thousand [16], that antibodies in the blood stream of the baby were gradually destroying all red blood cells [18], that the blood-supplying system of the baby could not take over and adequately supply its own blood quickly and adequately enough to overcome the condition [15], and that a blood transfusion was necessary for the child to overcome the condition. [14]

The medical evidence also showed that the child had a slim chance to "live without the transfusion". [15] Some doctors said that before the practice of using blood transfusion very few of the Rh babies lived but by use of it very few of them died from the Rh condition. [16, 20] One doctor was absolutely certain that the child would die without a transfusion. [18] Another said that without the transfusion the child would die in a matter of hours or days, and that death would be certain if the transfusion was not administered. [20]

The doctor said that, even if the child should survive death without a transfusion, the child very likely would suffer a brain injury, possibly insanity or become otherwise injured mentally for life. [16, 22]

While one doctor said that the blood transfusion would not be any more risky than taking an aspirin, he did admit, on cross-examination, that there was danger if it was not done properly. [19] The majority of the doctors testifying agreed that a transfusion involved a great risk. [14, 19, 21] One said that the transfusion could not be depended on for a sure cure of the condition. [21] They all agreed that there was a danger and risk that the blood used for the transfusion might be diseased and permanent injury result from the transfusion because of the possibility of human

error. [15, 19] The health commissioner said that there was a danger of mistyping the blood. [21]

With a full knowledge of all of the foregoing Darrell and Rhoda Labrenz refused to consent to the blood transfusion and based their refusal on the belief in the Bible commandments against the taking or of the mixing of blood. [23, 25] They, in good faith, believed that they could not submit the child to blood transfusion without violating the law of Almighty God which would result in their destruction at His hand. [23, 24, 25-26]

Darrell said that "it is my belief that the commandment given us in Genesis, Chapter 9, Verse 4, and subsequent commandment of Leviticus, Chapter 17, Verse 14, and also in the testimony after Christ's time and recorded in Acts, 15th Chapter, it is my opinion that any use of the blood is prohibited whether it be for food or whether it be for, as modern medical science puts it, for injections into the blood stream and as such I object to it. The life is in the blood and the life belongs to our Father, Jehovah, and it is only his to give or take; it isn't ours, and as such I object to the using of the blood in connection with this case." [23]

Rhoda said that "we believe it would be breaking God's commandment to take away blood which he told us to eat of the flesh but should not take of the blood into our systems. The life is in the blood and blood should not be drained out. We feel that we would be breaking God's commandment, also destroying the baby's life for the future, not only this life, in case the baby should die and breaks the commandment, not only destroys our chances but also the baby's chances for future life. We feel it is more important than this life." [25]

In the trial court Darrell offered to the court certain articles in the *Awake!* magazine, a religious publication of Jehovah's witnesses, which stated his beliefs and position on the subject of blood transfusion. [24] The magazine was excluded from the evidence but an exception was taken

to the ruling of the court. [24] The magazine articles appear in the record. [33-59]

The parents had seen the child several times during the week following its birth. [23, 25] Although in the early life of the baby it had contracted a jaundice, during the latter part of the first week the baby appeared to them to be in excellent condition, had gotten rid of the jaundice, lost its pale look and got some red in its cheeks. [23, 24] The doctor supported them in their testimony about the improvement of the child. [15-16] On May 4, 1951, the blood count of the child increased to four million seven hundred thousand. [26] The doctors advised further surveillance because it might again become necessary for another transfusion. [26-27] On May 4, 1951 the court ordered the child returned to the parents. [29-30]

It was reported to the trial court on June 15, 1951 that the "baby was very well cared for" by its parents and "apparently was in good condition." [31] The guardian told the court that it "seemed to be making satisfactory progress." [31] Because there had been a drop in the blood count during the week prior to June 15, 1951, notwithstanding the transfusions, the court retained jurisdiction. [31-32] Finally, without further transfusions, the child improved to such extent that the court discharged the guardian and dismissed the proceedings. [12]

Specification of the Reasons Relied on for Allowance of the Writ, and Discussion Thereof

The Court should take jurisdiction in this case because a substantial federal constitutional question is involved. Neither *Prince* v. *Massachusetts,* 321 U. S. 158, nor *Jacobson* v. *Massachusetts,* 197 U. S. 11, relied on by the court below, control the questions involved in this case. The decision in *West Virginia State Board of Education* v. *Barnette,* 319 U. S. 624, applies here.

In the *Prince* case the child labor law of Massachusetts was interpreted by the state courts to prohibit children of Jehovah's witnesses from engaging in public worship with the parents on the streets by distribution of magazines. This Court held that the police powers of the state under the doctrine of *parens patriae* outweighed the constitutional rights of the parents and children. *Prince* v. *Massachusetts,* 321 U. S. 158. There was involved in that case a state policy enacted for the welfare of all the children in the state. That is not the case here. The considerations supporting the *Prince* holding were so weighty that the constitutional guarantees were insufficient to tip the scales of justice.

The situation presented here is entirely different from the facts in the *Prince* case. In that case there was a prohibition against the parent imposed by the state. This restriction by the state did not itself involve subjecting the child to dangers. Here the state imposes and forces an act that exposes the child to danger.

The state has assumed to do for the child something that it could not do for an adult. The state cannot force a blood transfusion upon an adult person. It is for the adult person to say whether or not he wants to take a transfusion. Since an adult has the right to object to and refuse a blood transfusion, a child and its parents have the right to do the same thing. In re *Hudson,* 13 Wash. 2d 673, 126 P. 2d 765 and In re *Tuttendario,* 21 Pa. Dist. R. 561.

Jacobson v. *Massachusetts,* 197 U. S. 11, does not apply because that case involved the public welfare against epidemic which would injure others that the state could guard against by vaccination. There is no possibility that the Rh factor will spread or injure others by failure to take a blood transfusion. The disease is not contagious. There being no chance of an epidemic or other persons' becoming diseased, the police power does not enter to protect the welfare of the public in this case. The *Jacobson* decision is inapplicable. See 197 U. S. at pages 28, 29, 38-39.

Prince v. *Massachusetts*, 321 U. S. 158, involved a narrowly drawn statute. It did not involve a vague and indefinite policy expressed in a statute like that involved here. The law here does not present a uniform and specific policy. The statute challenged here is not narrowly drawn, which is required by the Court in cases arising under the First Amendment. *Cantwell* v. *Connecticut*, 310 U. S. 296, at pages 307, 308. It, by vague and indefinite provisions, permits the state policy and the enforcement thereof to be vested in a judge and a doctor, who have unlimited authority to deal with the liberty and person of the citizen without statutory limitation. If a judge is told by a doctor that the failure to give any particular medical treatment recommended by the doctor is not "proper parental care" and the judge chooses to do so, he can invade the person and liberty of the child and the parent. Without some definitely ascertainable standard by which the judge and the interested parties can proceed, know and determine their respective rights under the Constitution and the police power, there is a violation of the liberties guaranteed by the First and Fourteenth Amendments.

The lack of the required narrowly-drawn law makes the statute, as enforced, construed and applied here, invalid under the First and Fourteenth Amendments. *Winters* v. *New York*, 333 U. S. 507, at pages 515-518; *Lanzetta* v. *New Jersey*, 306 U. S. 451, at pages 457-458; *Herndon* v. *Lowry*, 301 U. S. 242, at page 258. The statute, as construed and applied, seems clearly to be invalid under these decisions.

The court below by its decision sweeps out the back door a uniform common law policy—not changed by the legislature of Illinois—established by the judges when the mind of man runs not to the contrary. This policy is that it is for the parents and not for the court to decide whether a major operation upon a child shall or shall not be performed. See In re *Hudson*, 13 Wash. 2d 673, 126 P. 2d 765; In re *Tuttendario*, 21 Pa. Dist. R. 561. This common law

policy is preserved as a part of the rights guaranteed by the First and Fourteenth Amendments. Known from time immemorial, this common law policy cannot be extirpated from the Constitution by a vague and indefinite statute loosely construed by the state courts. The respondents have failed to meet the standards required by the Court in decisions arising under the First and Fourteenth Amendments. *Thomas* v. *Collins,* 323 U. S. 516, 531; *Schneider* v. *New Jersey,* 308 U. S. 147, 161; *Thornhill* v. *Alabama,* 310 U. S. 88, 96. See also *Busey* v. *District of Columbia,* 138 F. 2d 592, 595-596.

The court below blandly brushes aside the application of the common law policy in this case which forms a part of the Fourteenth Amendment by stating that there was no risk involved. In order to reach this cavalier holding the court below hastily seized onto the testimony of one of the doctors who testified in the trial court. It swallowed the poisonous potion of testimony prepared for the court which was that administering a blood transfusion involved no greater risk than taking an aspirin.

Neither this ridiculous testimony nor the unreasonable inference adopted by the court below need be accepted. This Court is not bound by the conclusion or the testimony. It is the duty of the Court to make an independent investigation of the facts and determine them for itself. The Court has said that there must be a reappraisal of the facts in constitutional rights cases. *Pennekamp* v. *Florida,* 328 U. S. 331, 345; *Hooven & Allison Co.* v. *Evatt,* 324 U. S. 652, 659; *Haley* v. *Ohio,* 332 U. S. 596, 597-598; *Malinski* v. *New York,* 324 U. S. 401, 404-405. Compare *United States* v. *United States Gypsum Co.,* 333 U. S. 364, 394-396.

Unfortunately the petitioners did not have a chance to muster any medical defense. The proceedings were summary and rammed through in order to obtain speedily the legal consent required by the doctors. No time to prepare

was given. The petitioners were rushed from the hospital to the courthouse and therefore did not have time to get doctors of their own choice to give testimony on the question of propriety of blood transfusion. They had barely time to get a lawyer to appear for them. They were forced to rely on the right of cross-examination which did establish that grave dangers were involved. The court below ignored these considerations and was overcome by the doctrine of expediency. The court below, in the tenth paragraph of its opinion, said: "In situations like this one, public authorities must act promptly if their action is to be effective, and although the precise limits of authorized conduct cannot be fixed in advance, no greater uncertainty should exist than the nature of the problems make inevitable."

To establish the grave dangers attendant to blood transfusion the petitioners can, however, rely upon material that the Court should take judicial notice of. To say that blood transfusion involves no danger is to close the eyes to the facts and rely upon a ghostly myth manufactured to support the decision of the court below.

The *Saturday Evening Post,* March 25, 1950, contains an editorial about the prevalence of a nation-wide liver trouble known as hepatitis among people given transfusions of blood infected with virus. This was followed later in the year by a dispatch appearing in the *Science News Letter* for September 30, 1950, based on the September 16, 1950 issue of the *Journal of the American Medical Association,* giving the alarm that human blood plasma treated with ultraviolet light to destroy jaundice virus was dangerous.

Everybody's Digest for April, 1951 (a magazine) published an article by George Keaney entitled "The Yellow Menace in Blood Plasma". The article stated, among other things, that, of more than 200,000 cases of hepatitis in the armed forces, approximately 100,000 had been contracted from blood transfusions. It pointed out that 1,250,000 units

of plasma that may possibly have been infected with jaundice were returned to the Red Cross by the Armed Forces for release to blood banks throughout the country for civilian use.

Following a story about adulterated blood banks in *The Mirror* (a Los Angeles newspaper), an editorial was published by the paper on February 2, 1949, entitled "Blood Donors Need Efficient Regulation". It protested against the unregulated buying of blood from bums, drunks and tramps of the "skid row" of Los Angeles and putting it in the blood bank for hospital use. The editorial ended, "Blood works medical miracles. Any one of us may need it tomorrow, to live. No reputable operator can object to rigid regulation of the supply."

In the magazine *Reader's Scope* for October, 1945, there appears a condensation of the *Science News Letter* article by Van de Water entitled "Blood That Kills". A pertinent statement relating to the vagaries and mysteries of mixing of blood is made. The writer states that much "research is still ahead for medical scientists in this field before the crimes of Rh blood can finally be prevented. Since this blood factor was originally discovered a few years ago much ground has already been explored, but unfortunately many of the attempts to solve the problem have failed to meet success."

As a result of the sharp focus placed on the scourge of infection with jaundice by publicity there was an investigation. Finally on June 9, 1951 the National Institute of Health of the United States Public Health Service recalled all plasma derived from human blood. See *Parker* v. *State of New York,* 105 N. Y. S. 2d 735, for a reported case of the use of this bad blood plasma in a transfusion that caused death.

Due to human error as well as the fact that the blood transfusion is still in an experimental stage many deaths have occurred. Not all deaths have resulted in lawsuits and

judgments. But some have. In February 1949, Paul Phillips, a social worker was awarded a judgment in the District Court at Arlington, Virginia, for $9,000.00 against the National Homeopathic Hospital of Arlington because of death caused by blood transfusion given to his wife. There was an error in determining the Rh factor of her blood. There have been several such actions filed in courts in various parts of the country. For an extended article showing that a nation-wide survey revealed a frightening increase in error and carelessness in matching blood and making other tests by the medical laboratories of the country, resulting in death and disease, see "Menace in the Medical Labs" by Deutsch, published in the *Woman's Home Companion* for April, 1950.

There is some medical proof that blood transfusions produce cancer. According to Doctor Robert E. Lincoln, M. D., whose letter is referred to by Senator Charles W. Tobey in the Congressional Record for the 82nd Congress at page 42351, this is a grave danger. Senator Tobey said: "Mr. President, increasingly, articles in medical journals are stressing the dangers inherent in blood transfusions, in cases where adequate precautionary measures are not taken. It is acknowledged by the medical authorities that jaundice is one of the dangers resulting from such transfusions. Dr. Robert E. Lincoln, of Medford, Mass., has conducted a careful research program in which he has found that, without necessary counteractive medication, cancer can result in the victim. I ask unanimous consent to have printed in the Appendix of the RECORD a letter on this subject addressed to Mr. Paul Harvey, Co-Op Programs, New York City, dated March 1, 1952, by Robert E. Lincoln, M. D., and also a copy of a letter written by Dr. Lincoln to Admiral Boone, Chief Medical Director of the Veterans' Administration, dated March 1, 1952."

In the second letter referred to by Senator Tobey, the doctor wrote in part as follows:

"You should, without any further delay, make some effort to learn the extent to which the virus of infectious hepatitis is able to produce cancer, and also the prevalence of this virus in blood that is being used for blood transfusions. This blood, given without first treating the donor, is actually causing cancer, as well as the other disease entities pertinent to the Beta virus."

Dr. Timothy R. Talbot, Jr., M. D., of Philadelphia, writing on "Blood Transfusions" in the October, 1951 issue of the journal entitled "Surgery, Gynecology and Obstetrics", Volume 93 at page 411, said, among other things:

"The ease with which the clinician is now enabled to order and procure stored blood for transfusions has created a situation in which more transfusions are being given than is either wise or necessary. Many serious hazards continue to exist and blood transfusions are, both potentially and actually a dangerous undertaking. . . .

"The incidence of homologous serum jaundice continues to be distressingly high. The disease is transmitted by blood transfusions as well as by plasma infusions and other means, such as contaminated syringes and needles. It is obvious that every additional pint of blood increases the chances that the recipient will acquire this serious disease."

It seems from this information that the Court ought to be put on notice to question seriously the blasé statement of the star doctor in this case whose "aspirin" opinion was gullibly swallowed by the Supreme Court of Illinois.

The well-known fact that there is no law which regulates a blood bank or insures a person receiving blood against being given diseased blood, ought to be enough proof to establish that there lurk ever present and clear dangers from blood transfusion. The very fact that there is a rising tide of demand by doctors for blood substitutes rather than the use of blood in order to overcome these dangers proves that the blood transfusion is far from being a proved remedy or only remedy for the conditions treated.

A good summary of the history and progress of blood transfusion is given by McCurdy in his book *The Rhesus Danger,* William Heinemann Medical Books, Ltd., London, 1950. He says:

"In ancient times blood was thought by some to be the source of life. It was offered to the gods in sacrifice, drunk to give strength, and applied to the skin for various conditions both internal and external.

"The idea of exchanging blood from a blood vessel of one person to a blood vessel of another person is mentioned by various writers in the sixteenth century. It was thought by some that if the blood of a young man could be let into the veins of an old man, the old man would be rejuvenated, that a madman could be cured by giving him the blood of a sane man, that a sick man could be made well by giving him the blood of a healthy man, and so on. . . .

"A number of other attempts were made to transfuse humans with animals' blood; some of them were fatal and in 1678 transfusion of blood to humans was prohibited in France following a lawsuit in which a doctor was accused of murder by the widow of a patient who had died as the result of a transfusion. Shortly afterwards transfusion was forbidden by the Pope following some transfusion deaths in Rome.

"The subject of transfusion fell into disrepute until interest was revived in 1818 by some of the first experiments in transfusing blood from one human to another. These also were often fatal, but as they occasionally appeared to effect cures, especially in certain cases of anaemia, they were persisted in.

"One of the great difficulties in giving transfusions had always been to prevent the blood clotting; it was for this reason that transfusions were usually given direct from the donor to the patient. When blood clots the red blood cells stick together and separate from the liquid part of the blood, the 'serum.' It was found that this could be pre-

vented by stirring the blood for some minutes immediately after it had been drawn with twigs or a brush. This was sometimes done if the donor could not come to the patient and more than a minute or two would have to elapse before the transfusion. Nevertheless, despite this precaution, deaths continued to occur.

" . . . People have occasionally died as a result of blood transfusions despite absolute certainty that they belonged to the same group A, B, AB or O ever since it became possible, in 1908, to find out accurately which of these groups they belonged to by the use of standard sera."

Testimony of the doctors in this case established the risk, including possible death. They said that even though the transfusions were administered the trouble might not be overcome. [14-17, 18-19, 21-22] The literature on the subject of transfusion ought to be considered to show that the administration of the transfusion in this case involved dangers similar to that incident to a major operation and that the parents did not abuse their discretion and parental rights in following the dictates of their conscience and best judgment.

In the last paragraph of the opinion of the court below the sincerity of the religious beliefs of the petitioners against the taking of blood transfusions was said not to be questioned. In the fifth and sixth paragraphs of the opinion reference is made to the testimony of the petitioners stating the beliefs of the parents.

In view of the ancient pagan practices of infusing blood into the blood streams by drinking the blood of animals and humans as practiced by heathen nations around Judea, is it altogether reasonable for petitioners to believe that Jehovah God, in his unfathomable wisdom, knew all the dangers and, in order to avoid the Rh and other troubles, warned his people to avoid blood transfusion when he commanded them not to take blood? "But flesh with the life thereof, which is the blood thereof, shall ye not eat." (Gene-

sis 9:4) "It shall be a perpetual statute . . . that ye eat neither fat nor blood. . . . Whatsoever soul it be that eateth any manner of blood, even that soul shall be cut off from his people." (Leviticus 3:17 and 7:27) These commandments seem quite plain.

It cannot be argued that the intravenous giving and taking of blood into the blood stream by transfusion is not eating. It is common knowledge that for many years in the case of people who are physically incapable of taking food through their mouths they have been fed and kept alive in a period of crisis or operation by intravenous feeding through the veins. Since intravenous feeding is eating, it is plain that the transfusion of blood into the veins is eating for all practical purposes. The commandment of God against eating blood is the Constitution of the people who have covenanted to obey him, Jehovah's witnesses, and that Great Constitution, like the Constitution of the United States, "deals with substance, not shadows. Its inhibition was leveled at the thing, not the name". *Cummings* v. *Missouri*, 4 Wall. 277, 320-332.

It may be said that the Scriptural condemnation applies only to the eating of blood, and if it does, where is the transfusion of blood involved? To begin with, blood transfusion as we know it today was unknown in the times of Noah, Moses and Christ Jesus. Actually there is no difference between the two. In either case it is a matter of taking blood into the body. Taking it by transfusion can be considered more contrary to God's law than introducing it into the digestive system, because when one eats blood only a portion of it enters into the blood stream, however when transfused it is taken in directly and in a large dose. Since the principle is the same in either case, had blood transfusion been practiced in ancient times it would have been specifically condemned by God's Word.

The court below said the end justifies the means and since life is involved any means can be resorted to, to save

life. This, however, is fallacious reasoning. Actually the "end" of any Christian is to live up to God's Word and commands and not the preservation of his life. The early Christians in an effort to live up to God's law often lost their lives. Jesus said, "he that loseth his life for my sake shall find it."—Matthew 10:39.

It was unconstitutional for the trial judge in this case to superimpose upon and substitute for the sacred discretion of the parents in this case the orthodox opinions of doctors in the nebulous and mysterious field of blood, blood transfusion and the Rh factor. "Compulsory unification of opinion achieves only the unanimity of the graveyard. . . . If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, 641-642.

The First and Fourteenth Amendments to the United States Constitution secure the petitioners against assault of their conscience and bodies ordered by the state through the blood transfusion. They also make secure the right to marry, establish a home and bring up children. In *Meyer* v. *Nebraska*, 262 U. S. 390, 401-402, the Court said that these privileges were long recognized by common law, citing *Berea College* v. *Kentucky*, 211 U. S. 45, 47; *Allgeyer* v. *Louisiana*, 165 U. S. 578, 589. The Supreme Court of Washington properly said that the common law has long given the parent unreviewable discretion in determining whether or not certain medical treatment shall or shall not be administered to a minor child. In re *Hudson*, 13 Wash. 2d 673, 126 P. 2d 765. This right is preserved by the Fourteenth Amendment.

The Supreme Court of Illinois, however, says that parents in the United States are less secure under the United States Constitution against the assaults of doctors assisted

by juvenile court judges than are the parents of children in England under the common law where there are no written constitutional guarantees.

The people of the United States have a constitutional right to be free from the mandates of the doctors of medicine approved by the state. Blood transfusion is popular and accepted by the majority of people. Yet that fact does not entitle the courts to impose it upon the minority in disregard of their constitutional rights. Such rights are not dependent upon the majority vote of the doctors and people of the country. *West Virginia State Board of Education* v. *Barnette,* 319 U. S. 624, at page 638. A minority of the people have the right to be secure in their persons against the use of them as guinea pigs. They are no toy for the medical profession (because of the guarantees of the Constitution), even when the doctors, backed by public opinion, are able to hoodwink a juvenile court judge into believing that emergency demands his ignoring the constitutional rights of petitioners.

The Constitution does not permit the judiciary to become a chameleon to the medical profession and change the people's rights with the shifting and nebulous theories of the doctors. Bloodletting used to be in vogue in the days of George Washington. Following the death of Washington through bloodletting it was cast aside as foolish. Perhaps in time the medical profession will reject blood transfusion as folly and follow the fundamentals established by the Creator of man which prohibit the use of blood in the care of his body. In any event the petitioners have a constitutional right to be free from the doctors' practicing their experiments upon them.

This case is of widespread importance. The trouble is not endemic. It is epidemic. The difficulties over blood transfusion are ever prevalent. In all the thousands of hospitals throughout the country the practice is to give a blood transfusion on the slightest excuse. The doctors all, with

few exceptions, consider it proper practice to administer blood transfusions in almost all operations performed. The treatment of practically all accident cases where any blood is lost is blood transfusion.

It is apparent that the case is one of great public importance, otherwise the Supreme Court of Illinois would not have decided the question in the face of the contention that the case was moot. That decision was in harmony with the opinions of this Court in *Walling* v. *Helmerich & Payne, Inc.*, 323 U. S. 37, 43; *Hecht Co.* v. *Bowles*, 321 U. S. 321, 327; *Federal Trade Commission* v. *Goodyear Co.*, 304 U. S. 257, 260; *Fiswick* v. *United States*, 329 U. S. 211, 220-221. See also 94 U. of Pa. L. Rev. 125-147.

Whether reliance by parents upon their common law prerogative to decide whether a child shall be submitted to a blood transfusion is grounds for forfeiting the natural guardianship under the doctrines of *parens patriae* and placing custody in the state is of great public importance to the nation. The state of Illinois has led the way and set the example for other states. This question will continue to recur and be presented to the Court regularly in the future until it is decided. The Court ought to take jurisdiction and now determine the important question.

The decision of the court below is based squarely upon the opinion of this Court in *Prince* v. *Massachusetts*, 321 U. S. 158. Petitioners have here attempted to distinguish that opinion. If the Court does not accept the distinction and now relies upon the *Prince* decision also, then petitioners here request the Court to reconsider that opinion. (See Petition for Rehearing filed in the *Prince* case, No. 98, October Term 1943, rehearing denied 321 U. S. 804.) It ought to be set aside because it is just another step in the same direction taken in the case of *Gobitas* v. *Minersville School District*, 310 U. S. 586. See the special memorandum suggesting that the *Gobitas* decision be overruled in *Jones* v. *Opelika*, 316 U. S. 584, at pages 623-624.

It is respectfully submitted that this case is controlled by *West Virginia State Board of Education* v. *Barnette,* 319 U. S. 624, holding that the vital state right to instill patriotism into the minds of the children was subordinate to the conscientious objections of the child to participating in flag-salute ceremonies and giving the pledge of allegiance.

Prayer for Relief

WHEREFORE petitioners pray that this Court issue a writ of certiorari to the Supreme Court of Illinois, which court now possesses the record in this case, so that this Court can review the decisions and judgments of the Supreme Court of Illinois and the Circuit Court of Cook County, directing the Supreme Court of Illinois to certify to this Court for review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case as numbered and entitled on the docket of said court; and that the judgment of the Supreme Court of Illinois, affirming the judgment of the Circuit Court of Cook County, be here set aside and the cause remanded to the court below for further proceedings consistent with the decisions of this Court; and petitioners pray for such other and further relief in the premises as to this Court may seem just and proper in the circumstances.

HAYDEN C. COVINGTON

Counsel for Petitioners

June, 1952.

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IN THE

Supreme Court of the United States

October Term, 1952.

No. 131

DARRELL LABRENZ, RHODA LABRENZ AND CHERYL LINN LABRENZ, a minor, by Darrell Labrenz, her next friend,

Petitioners,

vs.

PEOPLE OF THE STATE OF ILLINOIS, on the relation of Alda Wallace and Harry Hill, the Chief Probation Officer of the Circuit (The Family Court) of Cook County, Illinois, Guardian over the person of Cheryl Linn Labrenz, a minor,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

The facts of the case are fully and fairly stated in the petition for *certiorari* in this Court and in the opinion of the Illinois Supreme Court.

The queston sought to be presented will, however, be given more precise focus if the facts are thus compendiously summarized:

Petitioners, parents of a newly born baby, forbade and sought to prevent the giving to the baby a transfusion of blood which the trial court and the Supreme Court of Illinois could reasonably find under the evidence, was necessary to prevent the child's death from the well-known Rh blood condition. The ground of their refusal was that, adhering to the teachings of the religious sect of which they were members, they believed that, in the words of the mother, "We feel that we would be breaking God's commandment, also destroying the baby's life for the future, not only this life, in case the baby should die and breaks the command, not only destroys our chances but also the baby's chances for future life. We feel that it is more important than this life."

There was some evidence to show that *if a transfusion is given improperly,* the transfusion may be fatal or attended by serious consequences. But there was no evidence from which a court could reasonably anticipate that the transfusion would be given improperly, and the proof showed that the baby's chances of survival without the transfusion were "slim".

The trial court, holding that the religious convictions of the parents could not be successfully invoked in opposition to the State's powers as *parens patriae* with respect to the life and health of children, in effect appointed a temporary guardian for the child, gave the guardian temporary custody of the child, and authorized the guardian to consent to the blood transfusion.

The Illinois Supreme Court affirmed the order appointing the guardian and approved the guardian's consent to the transfusion.

The Question Sought to be Presented.

I.

DOES RELIGIOUS FREEDOM, AS GUARANTEED BY THE FOURTEENTH AMENDMENT, ENTITLE PARENTS TO INTERPOSE THE TENETS OF THEIR FAITH IN OPPOSITION TO THE EXERCISE OF THE STATE'S POLICE POWER IN FAVOR OF A CHILD WHO MAY REASONABLY BE EXPECTED TO DIE UNLESS IT IS GIVEN A TYPE OF MEDICAL TREATMENT TO WHICH THE PARENTS OBJECT UPON RELIGIOUS GROUNDS?

II.

IF THE ANSWER TO THE QUESTION STATED ABOVE IS "NO", MUST THE STATE EXERT ITS POLICE POWER BY A SPECIFIC STATUTE?

SUMMARY OF ARGUMENT.

I.

Where the life, health or safety of children is concerned, the State's police power is superior to the religious beliefs of the parents.

II.

Neither authority nor reason requires that the State's power of parens patriae be formulated by a legislative enactment.

ARGUMENT.

I.

Where the life, health or safety of children is concerned, the State's police power is superior to the religious beliefs of the parents.

In *Jacobson* v. *Massachusetts*, 197 U. S. 11, this Court held that a court may require compulsory vaccination. Petitioners seek to distinguish this case by insisting that vaccination protects not only the person compulsorly vaccinated, but also others who but by enforced policy of vaccination, might be exposed to a communicable disease. The distinction is insubstantial. The State may prevent the death of one child as surely as it may prevent the death of many persons. It is rather surprising that petitioners should argue that a State may protect many lives by vaccinations but may not protect the life of a single individual when it is petitioners who are insisting upon the rights of minorities, however small. The child in question was a minority of one, threatened with death because of the beliefs of its parents. The State had a right to protect this child.

II.

Neither authority nor reason requires that the State's power of parens patriae be formulated by a legislative enactment.

Petitioners cite no case, nor do we know of any case which hold that the common law or equitable powers of *parens patriae* must be codified by statute.

There was no attempt in this case to punish petitioners for the violation of any law. The court merely exercised inherent common law and equity powers over the welfare of a child. The standard is formulated, not by the statute, but by the case law of Illinois, of which this case is one example, that if parents do not use reasonable care to preserve the lives of their children, their children will be placed in the hands of those who will presumably use such care.

There is no reason for a "narrowly drawn statute" in civil cases, as distinct from criminal cases, where a State is evolving its common law and equity jurisprudence.

Conclusion.

For the reasons stated in the Illinois Supreme Court opinion and emphasized in this brief, it is respectfully submitted that the petition for *certiorari* should be denied.

Respectfully submitted,

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